

DUPLICATE

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Federal Communications Commission

WASHINGTON, D. C. 20554

FCC
Office of the Secretary

In re Applications of)
CAPROCK EDUCATIONAL BROADCASTING)
FOUNDATION)
TEXAS TECH UNIVERSITY)
For Construction Permits)
Lubbock, Texas)

File No.: BPED-840626IE ✓

File No.: BPED-840924IF ✓

To: Chief Mass Media Bureau
FM Branch

REC'D MASS MED BUR

DEC - 3 1986

JOINT REQUEST FOR APPROVAL OF
SETTLEMENT AGREEMENT

PUBLIC REF. ROOM

Caprock Educational Broadcasting Foundation ("CAPROCK") and Texas Tech University ("TEXAS TECH"), by their respective attorneys and pursuant to Section 73.3525 of the Commission's Rules, hereby submit their Joint Request for Approval of Settlement Agreement ("Joint Request") in the above-captioned proceeding. In support thereof, the following is respectfully shown:

1. Before the Commission is the captioned application filed by CAPROCK for a construction permit for a new non-commercial FM station in Lubbock, Texas. The application of CAPROCK is mutually exclusive with the captioned application which TEXAS TECH also filed for Lubbock, Texas.

2. CAPROCK has entered into a settlement agreement with TEXAS TECH by which CAPROCK agrees to pay TEXAS TECH the sum of \$ 4,000.00 and TEXAS TECH agrees to dismiss its application so that the application of CAPROCK may be granted. The settlement agreement (which has an effective date of November 18, 1986) is attached hereto as exhibit 1.¹ The parties believe this agreement is in the public interest, as it will permit the expeditious grant of CAPROCK's application and result in the commencement of a new local educational FM service to Lubbock, Texas than would otherwise occur. In addition, the settlement agreement, if approved, will conserve the resources of both the Commission and the parties by avoiding the necessity of a comparative hearing.

3. Attached hereto as Exhibit 2 are Declarations Under Penalty of Perjury executed on behalf of each party which stated that the respective parties did not file their applications for the purpose of reaching a settlement agreement, that neither party has given nor received any consideration other than that stated in the agreement, and that each party believes a settlement to be in the public interest for the reasons enumerated within the settlement agreement. The parties have also recited in the agreement itself why they believe the agreement is in the public interest. The parties therefore are in compliance with Section 73.3525 of the rules.

¹Although the agreement is dated November 11, 1986 the signed counterparts were not received in Washington until November 18, 1986. See Exhibit 1, page 5, para. 13.

4. In view of the foregoing, it is respectfully requested that this Joint Request be approved that the TEXAS TECH application be dismissed, and the application of CAPROCK be granted.

Respectfully submitted,
CAPROCK EDUCATIONAL BROADCASTING
FOUNDATION

TEXAS TECH UNIVERSITY

By 
John A. Borsari

Their Attorney

John Borsari & Associates
900 17th Street, N.W., 9th Floor
P.O. Box 19205
Washington, D.C. 20036
(202) 775-1100

November 26, 1986

Exhibit 1

SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered into by and between Caprock Educational Broadcasting Foundation ("Caprock") and Texas Tech University ("Texas Tech") referred to herein as to "Parties", on this 11th, day of November, 1986.

WITNESSETH:

WHEREAS, Caprock and Texas Tech have applications pending before the Federal Communications Commission ("Commission") under File Nos. BPED-840626IE and BPED-840924IF for a construction permit for a new FM broadcast station to operate on 90.7 MHz to serve Lubbock, Texas;

WHEREAS, the Caprock and Texas Tech applications are mutually exclusive in that only one of them can be granted and;

WHEREAS, the Parties believe that it would serve the public interest to settle and terminate the aforesaid conflict, thereby eliminating the expense and burden to the parties and to the Commission of hearing proceedings and possible review proceedings thereafter, and expediting the provision of additional educational radio service to Lubbock area;

NOW, THEREFORE, IT IS AGREED AND CONTRACTED, by and between Caprock and Texas Tech, in consideration of their several promises and undertakings hereinafter set forth, the Parties intending to be legally bound as follows:

1. This Agreement is subject to the prior approval of the Commission and will not be consummated until such approval has been granted and become a Final Order (or Final Orders), as defined in Paragraph 7(b), infra.

2. Texas Tech will request dismissal of its application at the same time as a joint request for approval of this Agreement is filed with the Commission pursuant to Paragraph 8 hereof. Such request for dismissal shall be conditioned on approval of this Agreement by Final Order (or Final Orders) of the Commission.

3. Caprock will pay to Texas Tech the sum of Four Thousand Dollars (\$4,000.00) within 10 days after Texas Tech's application is dismissed.

4. In the event of disapproval of this Agreement by the Commission or the Commission's refusal to dismiss Texas Tech's application by Final Order (or Final Orders) of the Commission, Caprock will not be obligated to pay any sum to Texas Tech, and Texas Tech will not be obligated to dismiss its application.

5. In the event of termination of this Agreement as provided in Paragraph 6 infra, Texas Tech will not be obligated to dismiss its application.

6. In the event that there is no Order (or Orders) by the Commission approving this Agreement, dismissing Texas Tech's application by January 15, 1987, either Caprock or Texas Tech at any time thereafter, upon ten (10) days' written notice to the

other Party, may terminate the Agreement, provided that the Party seeking to terminate the Agreement is not in default thereunder. It is agreed that time is of the essence with respect to the provisions of this paragraph.

7. As used in this Agreement, the following terms have the following meanings:

(a) "Order" means a written authorization, determination, denial, ruling, or other action by the Commission or its staff, including the Administrative Law Judge designated to preside over the hearing proceeding with respect to the Caprock and Texas Tech applications.

(b) "Final Order" means an Order with respect to which the time for any and all requests for reconsideration, review, or appeal, and for reconsideration or review by the Commission on its motion, has expired, with no such request, reconsideration, review or appeal having been timely requested or instituted.

8. Within five (5) business days of the execution of this Agreement (or such later time as the Commission may authorize), the Parties will file it with the Commission, a joint request for its approval, in accordance with Section 73.3525 of the Commission's Rules and Regulations. Each party will provide the information and documents pertaining to it which are necessary or appropriate for inclusion in a request for approval of this Agreement. Each Party will promptly submit to the Commission any additional information pertaining to it which,

from time to time, may be reasonably necessary or appropriate to securing expeditiously a Final Order (or Final Orders) of the Commission approving this Agreement, and dismissing the Texas Tech application.

9. Caprock and Texas Tech agree to exercise their best efforts to obtain approval of this Agreement from the Commission, and to undertake any and all steps reasonably necessary for the successful prosecution of this Agreement, including the preparation and filing of any information or documentation in support thereof. Subject only to the right of termination as provided in Paragraph 6, supra, no Party to this Agreement shall undertake any action to preclude, hinder, or delay the issuance of a Final Order (or Final Orders) approving this Agreement, the payments to Texas Tech proposed herein, or the dismissal of the Texas Tech application. No Party, however, will be required to file or join any request for reconsideration, review or appeal of this Order (or Orders) issued by the Commission.

10. Any notice pursuant or relative to this Agreement shall be deemed given when delivered in writing to the other Party at the addresses shown below unless a different address is provided in writing to the other party:

If to Caprock: Caprock Educational Broadcasting
Foundation
3515 Goodfellow Lane
Amarillo, Texas 79121

If to Texas Tech: Dr. Clive Kinghorn
Box 4710 Tech Station
Lubbock, Texas 79409

With a copy to: John A. Borsari, Esq.
John Borsari & Associates
900 - 17th St., N.W., 9th Floor
P.O. Box 19205
Washington, D.C. 20036

11. Each of the Parties hereto warrants that neither it nor any person associated with it has directly or indirectly paid or promised to pay any other Party hereto or any person associated with such Party any consideration for the withdrawal of the Texas Tech application, except as expressly recited and disclosed herein.

12. Each of the Parties hereto further warrants that the representative who executed this Agreement on its behalf has full authority to do so, and that this Agreement is legally binding upon such Party and enforceable in accordance with its terms.

13. This Agreement may be signed in counterparts with the same force and effect as if all signatures were upon each counterpart copy. This Agreement shall come into effect upon the exchange of executed signature pages to this Agreement by and between the Washington, D.C. legal counsel of Texas Tech. The

date of such exchange of executed signature pages shall be deemed the date of execution of this Agreement.

14. The laws of the Texas shall govern the construction and enforcement of this Agreement.

15. This Agreement, and each and every of its rights, duties and obligations, bind and run to the parties, specifically, Caprock and Texas Tech, individually, and to their respective heirs, successors and assigns.

IN WITNESS THEREFORE, the Parties have caused this Agreement to be duly executed as of the date first above written.

CAPROCK EDUCATIONAL
BROADCASTING FOUNDATION

Witness

By: _____

Date _____

TEXAS TECH UNIVERSITY

Witness

By: E. E. Payne for
Lauro F. Cavazos, Ph.D., President

Date 11/15/86

REVIEWED FOR FISCAL IMPLICATIONS

E. E. Payne
Chief Fiscal Officer

Date: 11/15/86

REVIEWED FOR FORM AND CONTENT

Pat Campbell by Melba Richard
General Counsel

Date: 11/10/86

SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered into by and between Caprock Educational Broadcasting Foundation ("Caprock") and Texas Tech University ("Texas Tech") referred to herein as to "Parties", on this 13th, day of OCTOBER, 1986.

WITNESSETH:

WHEREAS, Caprock and Texas Tech have applications pending before the Federal Communications Commission ("Commission") under File Nos. BPED-840626IE and BPED-840924IF for a construction permit for a new FM broadcast station to operate on 90.7 MHz to serve Lubbock, Texas;

WHEREAS, the Caprock and Texas Tech applications are mutually exclusive in that only one of them can be granted and;

WHEREAS, the Parties believe that it would serve the public interest to settle and terminate the aforesaid conflict, thereby eliminating the expense and burden to the parties and to the Commission of hearing proceedings and possible review proceedings thereafter, and expediting the provision of additional educational radio service to Lubbock area;

NOW, THEREFORE, IT IS AGREED AND CONTRACTED, by and between Caprock and Texas Tech, in consideration of their several promises and undertakings hereinafter set forth, the Parties intending to be legally bound as follows:

1. This Agreement is subject to the prior approval of the Commission and will not be consummated until such approval has been granted and become a Final Order (or Final Orders), as defined in Paragraph 7(b), infra.

2. Texas Tech will request dismissal of its application at the same time as a joint request for approval of this Agreement is filed with the Commission pursuant to Paragraph 8 hereof. Such request for dismissal shall be conditioned on approval of this Agreement by Final Order (or Final Orders) of the Commission.

3. Caprock will pay to Texas Tech the sum of Four Thousand Dollars (\$4,000.00) within 10 days after Texas Tech's application is dismissed.

4. In the event of disapproval of this Agreement by the Commission or the Commission's refusal to dismiss Texas Tech's application by Final Order (or Final Orders) of the Commission, Caprock will not be obligated to pay any sum to Texas Tech, and Texas Tech will not be obligated to dismiss its application.

5. In the event of termination of this Agreement as provided in Paragraph 6 infra, Texas Tech will not be obligated to dismiss its application.

6. In the event that there is no Order (or Orders) by the Commission approving this Agreement, dismissing Texas Tech's application by January 15, 1987, either Caprock or Texas Tech at any time thereafter, upon ten (10) days' written notice to the

other Party, may terminate the Agreement, provided that the Party seeking to terminate the Agreement is not in default thereunder. It is agreed that time is of the essence with respect to the provisions of this paragraph.

7. As used in this Agreement, the following terms have the following meanings:

(a) "Order" means a written authorization, determination, denial, ruling, or other action by the Commission or its staff, including the Administrative Law Judge designated to preside over the hearing proceeding with respect to the Caprock and Texas Tech applications.

(b) "Final Order" means an Order with respect to which the time for any and all requests for reconsideration, review, or appeal, and for reconsideration or review by the Commission on its motion, has expired, with no such request, reconsideration, review or appeal having been timely requested or instituted.

8. Within five (5) business days of the execution of this Agreement (or such later time as the Commission may authorize), the Parties will file it with the Commission, a joint request for its approval, in accordance with Section 73.3525 of the Commission's Rules and Regulations. Each party will provide the information and documents pertaining to it which are necessary or appropriate for inclusion in a request for approval of this Agreement. Each Party will promptly submit to the Commission any additional information pertaining to it which,

from time to time, may be reasonably necessary or appropriate to securing expeditiously a Final Order (or Final Orders) of the Commission approving this Agreement, and dismissing the Texas Tech application.

9. Caprock and Texas Tech agree to exercise their best efforts to obtain approval of this Agreement from the Commission, and to undertake any and all steps reasonably necessary for the successful prosecution of this Agreement, including the preparation and filing of any information or documentation in support thereof. Subject only to the right of termination as provided in Paragraph 6, supra, no Party to this Agreement shall undertake any action to preclude, hinder, or delay the issuance of a Final Order (or Final Orders) approving this Agreement, the payments to Texas Tech proposed herein, or the dismissal of the Texas Tech application. No Party, however, will be required to file or join any request for reconsideration, review or appeal of this Order (or Orders) issued by the Commission.

10. Any notice pursuant or relative to this Agreement shall be deemed given when delivered in writing to the other Party at the addresses shown below unless a different address is provided in writing to the other party:

If to Caprock: Caprock Educational Broadcasting
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3515 Goodfellow Lane
Amarillo, Texas 79121

If to Texas Tech: Dr. Clive Kinghorn
Box 4710 Tech Station
Lubbock, Texas 79409

With a copy to: John A. Borsari, Esq.
John Borsari & Associates
900 - 17th St., N.W., 9th Floor
P.O. Box 19205
Washington, D.C. 20036

11. Each of the Parties hereto warrants that neither it nor any person associated with it has directly or indirectly paid or promised to pay any other Party hereto or any person associated with such Party any consideration for the withdrawal of the Texas Tech application, except as expressly recited and disclosed herein.

12. Each of the Parties hereto further warrants that the representative who executed this Agreement on its behalf has full authority to do so, and that this Agreement is legally binding upon such Party and enforceable in accordance with its terms.

13. This Agreement may be signed in counterparts with the same force and effect as if all signatures were upon each counterpart copy. This Agreement shall come into effect upon the exchange of executed signature pages to this Agreement by and between the Washington, D.C. legal counsel of Texas Tech. The

date of such exchange of executed signature pages shall be deemed the date of execution of this Agreement.

14. The laws of the Texas shall govern the construction and enforcement of this Agreement.

15. This Agreement, and each and every of its rights, duties and obligations, bind and run to the parties, specifically, Caprock and Texas Tech, individually, and to their respective heirs, successors and assigns.

IN WITNESS THEREFORE, the Parties have caused this Agreement to be duly executed as of the date first above written.

CAPROCK EDUCATIONAL
BROADCASTING FOUNDATION

Debbie Webb
Witness

By: Gary R Barton
Date OCT. 13, 1986

TEXAS TECH UNIVERSITY

Witness

By: _____
Date _____

DECLARATIONS UNDER PENALTY OF PERJURY

Attached are the form of the declarations which have been prepared and sent to the applicants.

They will be filed as a supplement when executed.

DECLARATION UNDER PENALTY OF PERJURY

I, Gary R. Barton, hereby declare as follows:

1. I am authorized by of Caprock Educational Broadcasting Foundation ("Caprock") to execute this Declaration.

2. The Caprock application (BPED-840626IE) for an FM station, at Lubbock Texas, was not filed for the purpose of reaching or obtaining a settlement.

3. The Settlement Agreement in which Caprock and Texas Tech have entered into specifies that Caprock will pay Four Thousand dollars (\$ 4,000.00) to Texas Tech for dismissal of its application.

4. Other than the Four thousand dollars (\$ 4,000.00) specified in paragraph 2 of the "Settlement Agreement" , no other consideration has been paid or promised by or to Texas Tech by any person relative to dismissal of the Texas Tech application.

5. Approval of the Agreement between the applicants in this proceeding will be in the public interest because it will lead to the earliest commencement of a new educational FM service in Lubbock, Texas and avoid the unnecessary expenditure of time and resources by both the Commission and the applicants.

Pursuant to the provision of 47 C.F.R. Section 1.16 and 28 U.S.C. Section 1746, I declare under penalty of perjury under

the laws of the United States of America that the foregoing is true and correct. Executed on December _____ 1986.

Gary R. Barton

DECLARATION UNDER PENALTY OF PERJURY

I, John R. Darling, hereby declare as follows:

1. I am Vice President for Academic Affairs of Texas Tech University.

2. The Texas Tech application (BPED-840924IF) for an FM station, at Lubbock Texas, was not filed for the purpose of reaching or obtaining a settlement.

3. The Settlement Agreement in which Caprock and Texas Tech have entered into specifies that Caprock will pay Four Thousand dollars (\$ 4,000.00) to Texas Tech for dismissal of its application.

4. Other than the Four thousand dollars (\$ 4,000.00) specified in paragraph 2 of the "Settlement Agreement" , no other consideration has been made or promised by or to Texas Tech by or to any person relative to dismissal of the Texas Tech application.

5. Approval of the Agreement between the applicants in this proceeding will be in the public interest because it will lead to the earliest commencement of a new educational FM service

in Lubbock, Texas and avoid the unnecessary expenditure of time and resources by both the Commission and the applicants.

Pursuant to the provision of 47 C.F.R. Section 1.16 and 28 U.S.C. Section 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on December_____, 1986.

John R. Darling